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 Cameron Deatsch*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

CITY OF HOLLYWOOD FIREFIGHTERS'
 PENSION FUND, Individually and on Behalf
 of All Others Similarly Situated,

Plaintiff,

vs.

ATLASSIAN CORPORATION,
 ATLASSIAN CORPORATION PLC,
 MICHAEL CANNON-BROOKES, SCOTT
 FARQUHAR, ANU BHARADWAJ, and
 CAMERON DEATSCH,

Defendants.

CASE NO. 3:23-cv-00519-WHO

**DEFENDANTS' NOTICE OF MOTION
 AND MOTION TO DISMISS SECOND
 AMENDED CLASS ACTION COMPLAINT
 FOR VIOLATIONS OF THE FEDERAL
 SECURITIES LAWS; MEMORANDUM OF
 POINTS AND AUTHORITIES**

Date: August 7, 2024
 Time: 2:00 p.m.
 Courtroom: 2, 17th Floor
 Judge: Hon. William H. Orrick, III

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 7, 2024, at 2:00 p.m., or as soon thereafter as the Court's schedule allows, in Courtroom 2 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, Seventeenth Floor, San Francisco, California 94102, Defendants Atlassian Corporation and Atlassian Corporation Plc, Michael Cannon-Brookes, Scott Farquhar, Anu Bharadwaj, and Cameron Deatsch (collectively, "Defendants") will and hereby do move to dismiss the Second Amended Class Action Complaint for Violations of the Federal Securities Laws filed by Lead Plaintiffs City of Hollywood Firefighters' Pension Fund and Oklahoma Firefighters Pension and Retirement System.

This Motion is made pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4 *et seq.*, on the grounds that Plaintiffs fail to state a claim on which relief can be granted.

Defendants' Motion is based on this Notice of Motion and Motion to Dismiss, the following Memorandum of Points and Authorities, the Request for Judicial Notice and Incorporation by Reference and Declaration of Colleen C. Smith filed concurrently herewith, all files and records in this action, and anything else as may be considered by the Court. Through this Motion, Defendants seek an order dismissing the Second Amended Complaint with prejudice for failure to state a claim.

ISSUES TO BE DECIDED

Whether the Second Amended Complaint fails to state a claim under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 ("Exchange Act").

Dated: April 19, 2024

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Michele D. Johnson
Michele D. Johnson

Attorneys for Defendants

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GLOSSARY

<u>Term</u>	<u>Definition</u>
¶	Refers to the paragraphs of the Second Amended Complaint
Amended Complaint	Plaintiffs' Amended Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 40)
Annual Report	Atlassian's annual report on Form 20-F for the fiscal year ended June 30, 2022, filed with the SEC on August 19, 2022
Atlassian or the Company	Atlassian Corporation (and where applicable, Atlassian Corporation Plc)
CEO	Chief Executive Officer
COO	Chief Operating Officer
CRO	Chief Revenue Officer
CW	Confidential Witness
Defendants	Atlassian Corporation, Atlassian Corporation Plc, Michael Cannon-Brookes, Scott Farquhar, Anu Bharadwaj, and Cameron Deatsch
Dismissal Order	The Court's January 22, 2024 Order Granting Defendants' Motion to Dismiss Plaintiffs' Amended Complaint (Dkt. No. 53)
Ex.	Exhibits attached to the Declaration of Colleen C. Smith, filed concurrently herewith
Existing Paid User Expansion	Existing Atlassian paying customers who add additional paying users to their subscriptions
First quarter, Q1 or Q1 23	First quarter of FY 2023 (July 1, 2022 – September 30, 2022)
Fourth quarter, Q4 or Q4 22	Fourth quarter of FY 2022 (April 1, 2022 – June 30, 2022)
Free-to-Paid Conversion	Free customers (with between one and ten users) who convert to a paid subscription
FY 2022	Fiscal year 2022 (July 1, 2021 – June 30, 2022)
FY 2023	Fiscal year 2023 (July 1, 2022 – June 30, 2023)
GAAP	United States Generally Accepted Accounting Principles
Plaintiffs	Lead Plaintiffs City of Hollywood Firefighters' Pension Fund and Oklahoma Firefighters Pension and Retirement System
PSLRA	Private Securities Litigation Reform Act of 1995
SEC	United States Securities and Exchange Commission
Second Amended Complaint or SAC	Second Amended Class Action Complaint (Dkt. No. 59)

1 **I. INTRODUCTION**

2 Plaintiffs' Second Amended Complaint suffers from the same flaws as the Amended
3 Complaint and it too should be dismissed. The Court rejected Plaintiffs' theory that Defendants
4 fraudulently downplayed a slowdown in Free-to-Paid Conversions and omitted a slowdown in
5 Existing Paid User Expansion because: (1) Atlassian disclosed the Free-to-Paid Conversion
6 slowdown, and Plaintiffs alleged no facts indicating it was anything but slight; (2) the slowdown
7 in Existing Paid User Expansion did not begin until the second half of Q1 23, which is what
8 Defendants disclosed; and (3) it was "not logical" to infer that Defendants would "affirmatively
9 omit the full picture about the status of the company when talking to investors and analysts, and
10 instead reveal the details eight weeks later." The Second Amended Complaint is just more of the
11 same, and the Court's prior ruling should apply again, this time with prejudice.

12 All Plaintiffs add to their new complaint are unspecific allegations from three new
13 confidential witnesses. But these allegations do nothing to establish either the falsity of any
14 challenged statement or any intent of any Defendant to defraud investors, because the CWs say
15 nothing about any specific metric at any specific point in time. Without particularized
16 allegations, the CWs cannot support Plaintiffs' claim that Defendants intentionally concealed—
17 for just a few weeks—exactly how much two metrics were slowing and the supposedly material
18 impact on Atlassian's business. The CWs collectively claim only that "things" were "slowing
19 down" at some point in time, but the CWs do not say *what* "things" were "slowing down," let
20 alone suggest that Existing Paid User Expansion began to slow down sooner than mid-August
21 2022, as Defendants disclosed. To the contrary, the CWs only confirm that the slowdown in
22 Existing Paid User Expansion did *not* begin sooner, because they allege that Atlassian started a
23 project in September 2022 *after that slowdown began*, to drive more collaboration with large
24 customers. The CW allegations similarly say nothing at all specific to Free-to-Paid
25 Conversions—and they certainly do not suggest that the slowdown in this metric was more than
26 "slight," as Defendants described.

27 Indeed, Plaintiffs still fail to allege facts suggesting there was an undisclosed material
28 adverse impact on Atlassian during Q1 23, let alone that Defendants were aware of one in Q1 23,

1 but misleadingly omitted it. The Court previously found that one challenged statement in
 2 September 2022 was alleged to be misleading because Ms. Bharadwaj did not affirmatively
 3 disclose a slowdown in Existing Paid User Expansion that had begun a few weeks earlier, but
 4 dismissed that challenge because Plaintiffs failed to plead scienter. While the claim still fails on
 5 scienter, Defendants also request that the Court reconsider its falsity ruling because Plaintiffs do
 6 not identify any facts suggesting any Defendant was aware that the slowdown was already
 7 *material* or that it amounted to a *discernible* trend by September 2022. Defendants were not
 8 required to speculate about whether a newly observed slowdown would *become* a material trend
 9 impacting the business, and Plaintiffs offer no facts suggesting Defendants had already
 10 determined that it was.

11 The CW allegations also do not remedy Plaintiffs’ failure to plead any particularized
 12 facts showing that Defendants acted with scienter in making any of the challenged statements.
 13 No CW is alleged to have been in a position to speak to any Defendant’s state of mind. And
 14 Plaintiffs still do not explain why any Defendant would mislead investors while supposedly
 15 knowing the “truth” would be revealed just a few weeks later, without seeking to capitalize on
 16 that alleged deception. Instead, the more compelling inference remains true—Defendants
 17 updated investors each quarter on any macroeconomic impacts Atlassian was seeing. That is not
 18 fraud, and the Second Amended Complaint should be dismissed with prejudice.

19 **II. BACKGROUND¹**

20 **A. Atlassian Achieves Growth by Providing Free Productivity-Enhancing** 21 **Software and Then Expanding Its Customer Relationships**

22 Atlassian is a technology company that develops, sells, and licenses team collaboration
 23 software designed to enhance productivity and help teams work together. ¶¶ 5, 32. Atlassian
 24 was founded in 2002 by Messrs. Cannon-Brookes and Farquhar, who serve as co-CEOs
 25 alongside then-COO Ms. Bharadwaj (who was promoted to President in February 2023) and
 26 CRO Mr. Deatsch. ¶ 3. Atlassian takes pride in its culture and values, and it prioritizes
 27 transparency and openness throughout the organization and with customers and investors. ¶ 33.

28 ¹ Additional background can be found in Defendants’ prior motion to dismiss. Dkt. No. 43.

Atlassian does not rely primarily on a traditional sales force to distribute and sell its products. ¶ 35. Instead, Atlassian offers its products for free to new customers, up to ten users per account. ¶ 36. It then generates most of its revenue when (1) a customer adds more than ten users (Free-to-Paid Conversions), which accounts for approximately 10% of Atlassian’s revenue, or (2) an existing paying customer adds additional users for a fee (Existing Paid User Expansion), which accounts for approximately 90% of Atlassian’s revenue. ¶¶ 36-38. Atlassian also generates revenue through upgrades by free or paid users to premium or enterprise plans that include additional services and features more personalized to the user (“Subscription Upgrades”). Ex. A at 38, 39; Ex. D at 10. Subscription Upgrades is a distinct metric measuring revenues from users who upgrade subscriptions—but it also falls within either the 10% or 90% revenue attributed to Free-to-Paid Conversions or Existing Paid User Expansion (depending on whether the user upgrading their subscription was a free or paid user). Ex. A at 38, 39; *see also* ¶ 68.

Atlassian has historically had a relatively linear sales cycle as opposed to relying on a “hockey stick” increase in sales at the end of a quarter or year to meet targets. ¶¶ 40-44. In August 2022, however, Atlassian noted that recent business transitions could “drive short-term variability” (Ex. A at 39), and specifically warned that despite its historically linear sales cycle, “quarterly financial results may fluctuate as a result of a variety of factors, many of which are outside of our control” (*id.* at 10-11). Atlassian also warned that “*the impact of the current economic uncertainty* may cause customers to request concessions, including better pricing, or to slow their rate of expansion or reduce their number of licenses, *which may not be reflected immediately in our results of operations.*” *Id.* at 12 (emphasis added).

B. Atlassian Provides Q4 and FY 2022 Results and Q1 and FY 2023 Guidance, While Warning That Growth Could Be Impacted by Evolving Market Conditions

On August 4, 2022, Atlassian issued a press release and a detailed shareholder letter announcing financial results for the fourth quarter and full fiscal year 2022, which ended June 30, 2022. *See* Ex. C; ¶¶ 52-53. Atlassian hosted an investor call the same day. Ex. B; ¶¶ 54-55.

In the shareholder letter, Atlassian reported 36% year-over-year total revenue growth, but warned of “variability” in total revenue growth going forward. Ex. C at 14. Atlassian projected

1 approximately 50% year-over-year growth in Cloud-based revenue, but again cautioned
 2 investors that Atlassian was not “insulated from broader macroeconomic impacts” and instead
 3 found itself “in a climate of widespread uncertainty.” *Id.* at 2, 14. Atlassian specifically
 4 disclosed that it had already begun to see some softening in Free-to-Paid Conversions. *Id.* at 14;
 5 ¶ 55. It considered that slowdown “modest” and told investors that “nothing we are seeing *right*
 6 *now* is changing our outlook,” but warned that everyone would need to “*remain vigilant* in this
 7 environment.” Ex. C at 2, 14 (emphasis added); ¶¶ 53-54.

8 Two weeks later, in its Annual Report, Atlassian further updated investors about several
 9 macroeconomic pressures that could have a material effect on its revenues, including
 10 “[w]eakening economic conditions as a result of the COVID-19 pandemic, rising inflation,
 11 increases in interest rates, and Russia’s invasion of Ukraine,” and warned investors that the
 12 extent of these potential impacts would “depend on future developments, which are uncertain
 13 and cannot be predicted at this time.” Ex. A at 66. Atlassian cautioned that many of its
 14 customers “may be adversely impacted by weakening economic conditions,” and that Atlassian
 15 “may experience elongated sales cycles and extended payment terms and concessions due to
 16 weakening economic conditions.” *Id.* Atlassian noted, however, that it had not yet experienced
 17 any material adverse trends from the macroeconomic environment. *Id.*

18 In September 2022, Ms. Bharadwaj spoke at an informal investor conference and
 19 reiterated that Atlassian was not immune to “overall macroeconomic conditions.” Ex. D at 9; ¶¶
 20 65-66. She repeated that Atlassian was “seeing a bit of softness over the past couple of months”
 21 in Free-to-Paid Conversions. Ex. D at 9. Ms. Bharadwaj updated investors that she had not seen
 22 “any discernable trend . . . in terms of the macroeconomic impact” on free or paid users
 23 upgrading their subscriptions, and she warned investors that Existing Paid User Expansion was
 24 “an area that we continue to monitor” and “that’s going to be an important one to look at in the
 25 current climate.” *Id.* at 9-10; ¶ 68.

26 C. Atlassian Redomiciles From the United Kingdom to the United States

27 Atlassian redomiciled its parent company to the United States (from the United
 28 Kingdom), incorporating in Delaware, effective September 30, 2022, following board and

1 shareholder approval. *E.g.*, Ex. C at 17; *see also* ¶ 18. That redomiciliation required Atlassian to
 2 file amendments to existing registration statements on Form S-8 for employee stock award plans,
 3 which in turn required Atlassian to incorporate by reference its most recent financial statements.
 4 ¶ 122. Atlassian filed an amended Form S-8 on October 4, 2022, incorporating the Annual
 5 Report and noting it covered the year ended June 30, 2022. *Id.*; Ex. H at 2.

6 **D. Atlassian Announces Q1 23 Financial Results That Met Guidance, but**
 7 **Revises Forward-Looking Guidance for the Remainder of FY 2023**

8 On November 3, 2022, Atlassian announced financial results for the first quarter of fiscal
 9 year 2023, covering the period July 1, 2022 to September 30, 2022. Ex. E; Ex. F; ¶¶ 84-92.
 10 Atlassian did not announce “poor financial results” (¶ 84), but rather that it *met its previously*
 11 *issued revenue guidance* for the quarter. *See* Ex. F at 12, 14; Ex. E at 1; Ex. C at 3. Atlassian
 12 announced that total revenue grew 31% year-over-year to \$807.4 million, Ex. E at 1, which was
 13 in line with guided revenue of between \$795 and \$810 million, *see* Ex. C at 14, as well as Cloud
 14 revenue growth of 49% year-over-year, Ex. F at 11, in line with Atlassian’s guidance of
 15 approximately 50% growth, Ex. C at 14.

16 Despite strong first quarter results, Atlassian updated investors that it was “beginning to
 17 see the impact” of economic headwinds on its business. Ex. F at 2, 11. Specifically, Atlassian
 18 reported: “1) We saw a more pronounced continuation of the trend discussed last quarter, where
 19 fewer Free instances converted to paid plans; and 2) we also saw the growth of paid users from
 20 existing customers slow in the second half of Q1.” *Id.* at 11. Both of these developments were
 21 “the result of companies tightening their belts and slowing their pace of hiring.” *Id.* at 2; ¶ 85;
 22 *see also* Ex. G at 8, 10, 11. To account for these newly observed slowdowns and to provide
 23 investors with projections for the upcoming quarter, Atlassian lowered its Cloud-based full year
 24 revenue guidance for its fiscal year, from 50% year-over-year projected growth to a range of
 25 approximately 40% to 45% year-over-year projected growth for fiscal year 2023. Ex. F at 15.

26 **E. The Court Dismisses Plaintiffs’ Amended Complaint**

27 After Atlassian revised its go-forward guidance in November 2022, Atlassian’s stock
 28 price declined. ¶ 93. Plaintiffs filed suit soon after. Dkt. No. 1.

On January 22, 2024, the Court dismissed the Amended Complaint. Dismissal Order, Dkt. No. 53. The Court held that Mr. Deatsch’s August 4, 2022 statements were not false or misleading because: (1) Mr. Deatsch “told shareholders *in August*” that “there was a slowdown in Free-to-Paid Conversions,” and Plaintiffs did not contest the accuracy of that disclosure, *id.* at 11, (2) the slowdown in Existing Paid User Expansion “began in the second half of Q1, after the August 4 call,” so his statements did not “contradict[] anything that the defendants knew at the time,” *id.* at 13, and (3) “defendants specifically warned investors and shareholders that they would likely see ‘seasonality . . . over the next four quarters’” and “at most, [Atlassian’s] linear sales cycle shifted in mid-August, so there was nothing for the defendants to warn about on August 4,” *id.* at 12. The Court held that the Annual Report was not false or misleading in discussing “trends” because “plaintiffs fail[ed] to allege that the defendants knew of *any* trend to Paid User Expansion by the time the report was published on August 19.” *Id.* at 16.

With respect to Ms. Bharadwaj’s September 14, 2022 statements, the Court held the statements were not false or misleading with respect to Free-to-Paid Conversions because “defendants told the market about the Free to Paid slowdown in August, and [Ms.] Bharadwaj’s statements in September convey essentially the same information.” *Id.* at 18. While the Court considered Ms. Bharadwaj’s statements allegedly “misleading because they provided no commentary on the Paid User Expansion slowdown that began in mid-August,” *id.* at 18, it nonetheless dismissed Plaintiffs’ challenge for failure to sufficiently allege scienter, including because they “fail[ed] to plead a logical motive” to commit fraud and because there was “far more support” for the non-fraudulent inference that Ms. Bharadwaj’s voluntary mid-quarter statements were made “to provide open and regular communication to [] shareholders during uncertain economic times.” *Id.* at 22-25. In comparing this innocent explanation against an inference of scienter, the Court noted it was “not . . . even a ‘close question.’” *Id.* at 25.

F. Plaintiffs Amend Again Without Curing the Amended Complaint’s Flaws

Plaintiffs’ Second Amended Complaint is based on the same claims the Court concluded were not sufficient. Plaintiffs’ only additions are allegations from three new former employees:

1 CW3. CW3, described as the Head of Product & Business Operations, Work
 2 Management from June 2022 through June 2023, ¶ 49 n.6, alleges that “things” were “slowing
 3 down” and Atlassian was not “growing like gangbusters” when he joined Atlassian in June 2022.
 4 ¶ 74. CW3 claims he presented “metrics” to Ms. Bharadwaj “either directly in meetings or in a
 5 report that he submitted for her review,” and that “on other occasions his team’s report was
 6 incorporated into a document that was presented to Defendants Bharadwaj, Cannon-Brookes,
 7 and Farquhar.” ¶ 76. Plaintiffs conspicuously don’t say *what* “things” were slowing down,
 8 *which* “metrics” were presented, *what* the “report” said, or *when* any of this happened. CW3
 9 also alleges Atlassian as a whole “was not growing at 50% year-over-year growth,” but makes no
 10 mention of Atlassian’s consistent Company-wide revenue growth being historically around 30%
 11 while *Cloud* revenue growth was projected to grow by approximately 50%. ¶ 74. CW3 claims
 12 (erroneously) that in September 2022, Defendants began working on an internal project, labeled
 13 “Project Big Fish,” aimed at targeting large customers to increase their collaboration with
 14 Atlassian, with a second phase coming at some later but unstated time and labeled “Project Back
 15 to Fifty,” aimed at bringing Atlassian’s Cloud revenue back to 50% year-over-year growth.
 16 ¶¶ 80-83, 110.

17 CW4. CW4, described as a Sales Operation Program Manager from August 2022 to June
 18 2023, ¶ 82 n.8, claims that Atlassian employees were told to “re-direct our efforts” onto “revenue
 19 driving initiatives” at some unstated point in time and that Atlassian instituted a project called
 20 “Back to Fifty” to get Atlassian “back to reporting 50% year-over-year growth,” presumably
 21 after Atlassian reported 49% year-over-year Cloud revenue growth on November 3, 2022.
 22 ¶¶ 82-83.

23 CW5. CW5, described as a Principal Executive Recruiter from March 2022 until May
 24 2023 tasked with recruiting engineers, ¶ 83 n.9, claims that Atlassian took “additional steps” at
 25 some unspecified time to restore “50% cloud revenue growth.” ¶ 83 & n.9.

26 **III. LEGAL STANDARD**

27 To state a Section 10(b) securities fraud claim, Plaintiffs must plead with particularity
 28 “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection

1 between the misrepresentation or omission and the purchase or sale of a security; (4) reliance
 2 upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” Dismissal
 3 Order at 8. Plaintiffs “must meet both the heightened pleading requirements for fraud under
 4 FRCP 9(b) and the exacting pleading requirements of the PSLRA.” *Id.* at 4.

5 In order to plead a claim with requisite particularity, Plaintiffs must “specify each
 6 statement alleged to have been misleading, [and] the reasons or reasons why the statement is
 7 misleading.” *Id.* at 5 (quoting 15 U.S.C. § 78u-4(b)(1)(B)). And they must plead particularized
 8 facts giving rise to a strong inference of scienter by demonstrating that Defendants “made false
 9 or misleading statements either intentionally or with deliberate recklessness.” *Id.* (quoting *Zucco*
 10 *Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 991 (9th Cir. 2009)). “Facts showing mere
 11 recklessness or a motive to commit fraud and opportunity to do so . . . are not sufficient to
 12 establish a strong inference of deliberate recklessness.” *Id.* at 5. And “[w]here, as here, the
 13 Plaintiffs seek to hold individuals and a company liable on a securities fraud theory,” they must
 14 “allege scienter with respect to each of the individual defendants.” *Or. Pub. Emps. Ret. Fund v.*
 15 *Apollo Grp. Inc.*, 774 F.3d 598, 607 (9th Cir. 2014). The Court “must consider plausible,
 16 nonculpable explanations for the defendant’s conduct,” and any “inference of scienter . . . must
 17 be cogent and compelling, thus strong in light of other explanations.” Dismissal Order at 22
 18 (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007)). In ruling on a
 19 motion to dismiss, courts are “not required to accept as true ‘allegations that are merely
 20 conclusory, unwarranted deductions of fact, or unreasonable inferences.’” *Id.* at 4.

21 **IV. ARGUMENT**

22 **A. Plaintiffs Still Fail to Plead Falsity**

23 The Second Amended Complaint challenges the same statements Plaintiffs challenged
 24 before. ¶¶ 107-23. But once again, Plaintiffs offer no facts establishing that any of the
 25 challenged statements were false or misleading when made, or were contradicted by
 26 contemporaneous facts. *See Norfolk Cnty. Ret. Sys. v. Solazyme, Inc.*, 2016 WL 7475555, at *3
 27 (N.D. Cal. Dec. 29, 2016) (dismissing securities claims where “allegations omit
 28 contemporaneous facts that would establish a contradiction between the alleged materially

misleading statements and reality”); *see also* *Weston Family P’ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 619 (9th Cir. 2022) (“[f]or a statement to be false or misleading, it must ‘directly contradict what the defendant knew at the time’ or ‘omit material information’”). Plaintiffs’ inclusion of additional CW testimony vaguely asserting that “things” were “slowing down” at some unspecified point in time lacks sufficient reliability and specificity to establish the falsity of any challenged statement.

1. Plaintiffs Do Not Allege Facts Establishing That Mr. Deatsch’s August 4, 2022 Statements Were False or Misleading

Plaintiffs continue to challenge Mr. Deatsch’s statements during Atlassian’s August 4, 2022 earnings call discussing results for the quarter and year ended June 30, 2022:

- Statement 1: “The good news as of to date is we have yet to see any specific trend geographically or even in industry segments or in customer size that gives us pause or worry to date. So, something we continue to watch like a hawk, but there is no news to share today.” ¶ 108.
- Statement 2: “[W]e have not seen any significant shift in customer demand across our product lines[.]” *Id.*
- Statement 4: Free-to-Paid Conversions slowdown was a “slight thing” that “does not take away from the continued growth we see in our existing customer base that also drives more than 90% of our revenue in the existing year.” ¶ 111.²

Plaintiffs repeat their contention that these statements were false because: (1) Defendants “admitted at the end of the Class Period” that the slowdown in Free-to-Paid Conversions was a material “trend,” and therefore, not a “slight thing,” and (2) Defendants allegedly “knew of the negative paid user expansion ‘trend’ at the time of the statements.” ¶¶ 109, 112. But the Court rejected that very challenge. Dismissal Order at 11-15. The Court found that Plaintiffs failed to “allege facts that [the] slowdown in Free to Paid Conversions was anything more than ‘slight’ in August.” *Id.* at 15. The Court also found that the slowdown in Existing Paid User Expansion “began in the second half of Q1, after the August 4 call,” and thus Mr. Deatsch’s statements did not “contradict[] anything that the defendants knew at the time.” *Id.* at 13.

² Plaintiffs have abandoned their challenge to Statement 3. *See* Dismissal Order at 13.

1 Plaintiffs offer no new allegations that would change the Court’s holding that the
 2 statements were not misleading. The only additions to the SAC are unspecific CW allegations
 3 that are untethered to any particular metric at any exact time and thus do not support the falsity
 4 of any challenged statement. And regardless, the CWs are not adequately pled to be in a position
 5 to know what they claim, even assuming they purport to speak about company-wide metrics.

6 **a. Plaintiffs’ New CW Allegations Do Not Establish Facts**
 7 **Contradicting the Challenged Statements**

8 Plaintiffs’ CW allegations lack any particularity and do not suggest that any challenged
 9 statement was false when made.³ *Zucco*, 552 F.3d at 995. CW4 and CW5 allege only that
 10 employees were put onto “revenue driving initiatives,” and that at some point in time, Atlassian
 11 “rebalance[d] priorities” to get back to 50% Cloud revenue growth. ¶¶ 82-83. But they do not
 12 explain what those “initiatives” were, or when the initiatives or rebalancing of priorities
 13 happened. *In re Solarcity Corp. Sec. Litig.*, 274 F. Supp. 3d 972, 1009 (N.D. Cal. 2017)
 14 (rejecting CW allegations that fail to show “specific contemporaneous . . . conditions that
 15 demonstrate the intentional or the deliberately reckless false or misleading nature of the
 16 statements when made”).

17 Plaintiffs focus mainly on CW3, but CW3 does not claim to provide any level of detail
 18 about *what* information was reported regarding *what* unidentified metrics, to *whom*, and *when*.
 19 *See Solarcity*, 274 F. Supp. 3d at 1009. And CW3 does not allege what “things” were slowing,
 20 to what extent, when, or who knew about them. At most, CW3 claims that when he joined
 21 Atlassian in June 2022, unidentified “things” were “slowing down” and Atlassian was not
 22

23 ³ As in the prior Complaint, Plaintiffs still do not allege that CW1 or CW2 was a part of, or
 24 played any role in, Atlassian’s sales process, financial projections or accounting, or strategic
 25 analysis, *see* ¶¶ 45, 48, and Plaintiffs’ newfound reliance on CW4 and CW5 is similarly
 26 insufficient. Each of these CWs worked at Atlassian for a limited amount of time (and CW2 left
 27 Atlassian before the class period), and Plaintiffs do not allege any of the CWs was in a position
 28 to know anything about the challenged statements, nor that any of these CWs ever interacted
 with any Defendant. ¶¶ 45 n.4, 48 n.5, 82 n.8, 83 n.9; *see In re Fusion-io, Inc. Sec. Litig.*, 2015
 WL 661869, at *18 (N.D. Cal. Feb. 12, 2015) (requiring CW accounts to be “contemporaneous”
 with the alleged misstatements); *Veal v. LendingClub Corp.*, 423 F. Supp. 3d 785, 814 (N.D. Cal.
 2019) (rejecting CW statements where there were no allegations the CW had direct or indirect
 contact with the individual defendants).

“growing like gangbusters” as before, but growth in unknown areas “was slower than expected.” ¶ 74. CW3 also alleges that he and his team reviewed “key metrics tied to Atlassian’s revenues” “on a daily basis.” ¶ 73. But CW3 provides “no hard numbers . . . data or other detail” about what those metrics were, what they showed, how they relate to any challenged statement, or with whom he shared his review findings. *Wozniak v. Align Tech., Inc.*, 850 F. Supp. 2d 1029, 1042-43 (N.D. Cal. 2012); *Scheller v. Nutanix, Inc.*, 450 F. Supp. 3d 1024, 1036 (N.D. Cal. 2020) (rejecting CW statements about allegedly undisclosed hiring freezes where CWs “fail[ed] to provide any details about these hiring freezes, such as how many there were, how long they lasted, how often they were instituted, how many employees they affected, or what locations they covered.”). CW3 *never mentions* Free-to-Paid Conversions or Existing Paid User Expansion, including what these metrics were in June, July, and August 2022, whether either was declining, or how they differed from any prior time period. When CW3 does use actual numbers, he does not tie the numbers to the particular metric at issue—instead, Plaintiffs intentionally muddle what CW3 is discussing. For example, CW3 claims that “while Atlassian was targeting growth at 50% year-over-year, internal metrics showed that the Company was only growing at a rate of 30% for the year.” ¶¶ 75, 77. CW3 conspicuously does *not* say that *Cloud* revenues were only growing at a rate of 30%. Rather, as Plaintiffs’ own allegations admit, Atlassian was targeting growth of *Cloud* revenues at 50% *and it was hitting that target or coming darn close*. ¶ 83, Ex. F at 11 (reporting 49% growth in Cloud revenues in Q1 2023). As Plaintiffs’ allegations also admit, Atlassian’s *total* revenue was growing approximately 30-34% year-over-year—which was in line with Atlassian’s targets for *total* revenue guidance for Q1 23, Ex. C at 11, 14; Ex. F at 12. Plaintiffs’ allegations about *targeted* growth and *actual* growth rates have nothing to do with each other. Plaintiffs’ repeated muddling of Atlassian’s metrics through insufficiently described CWs fails to allege falsity with particularity.

The CW allegations are also insufficiently particularized as to timing. CW4 and CW5 do not speak to timing at all, and CW3 never identifies with any particularity when he learned of any supposed slowdown or if and when he reported any information to Defendants. *See City of Sunrise Firefighters’ Pension Fund v. Oracle Corp.*, 2019 WL 6877195, at *14 (N.D. Cal. Dec.

17, 2019) (rejecting CW allegations that “lack in particularity as to time”). CWs alleging that at some time Atlassian focused on “revenue driving initiatives” says nothing about any challenged statement. ¶¶ 80-83. All told, the CWs’ vague assertions do not establish facts contradicting any challenged statement (including those on August 4), much less with the particularity required by the PSLRA. *See Kipling v. Flex Ltd.*, 2020 WL 2793463, at *18 (N.D. Cal. May 29, 2020) (rejecting CW statements that were “not indicative of the falsity” of any challenged statements).

Plaintiffs also fail to plead particularized facts sufficient to establish that the new CWs were in a position to know what they purport to allege. Plaintiffs allege CW3 was “Head of Product Strategy and Business Operations in the Work Management division,” and supposedly “was responsible for tracking numbers and forecasts for leading growth strategy, business performance analysis, and long-range planning” for unnamed Atlassian products. ¶ 73. Plaintiffs allege that CW4 was a Sales Operation Program Manager spearheading “the launch of new products” and that CW5 was a recruiter tasked with recruiting engineers. ¶¶ 82-83 & nn.8-9. However, Plaintiffs do not explain how someone in any of the new CWs’ positions would have been privy to detailed, company-wide metrics aggregated at a level necessary to be relevant to the challenged statements made by Atlassian’s most senior executives, much less instantaneously upon employment at Atlassian (in June 2022 for CW3, or August 2022 for CW4). *See Zucco*, 552 F.3d at 996 (rejecting CWs who “were simply not positioned to know the information alleged”); *Costabile v. Natus Med. Inc.*, 293 F. Supp. 3d 994, 1018 (N.D. Cal. 2018) (rejecting CW testimony where plaintiff “failed to allege sufficient facts from which it can be inferred that [CW] based his statements on his own personal knowledge or other reliable sources”); *N.Y. State Teachers’ Ret. Sys. v. Fremont Gen. Corp.*, 2010 WL 1473265, at *2 (C.D. Cal. Mar. 29, 2010) (rejecting CW testimony where “Plaintiff’s description of [the CW] [did] not link her position to any personal knowledge that would implicate Defendants”).

b. Mr. Deatsch’s Statements Were Non-Actionable Corporate Optimism

The Court did not previously consider whether Mr. Deatsch’s August 4, 2022 statements were non-actionable corporate optimism, but invited Defendants to “reraise that argument on a

subsequent motion.” Dismissal Order at 15. Plaintiffs’ challenge to Statements 1, 2, and 4 is precisely a quibble about the nonquantifiable adjectives Mr. Deatsch used. ¶¶ 108, 111. Plaintiffs allege that terms like “watch like a hawk,” “significant shift,” demand that is “strong,” and a “slight” slowdown” were misleading because the Free-to-Paid Conversion slowdown was not “slight.” *Id.* But courts consistently find such “vague, generalized assertions of corporate optimism” to be inactionable because “no reasonable investor would rely on such statements.” *See Sneed v. AcelRx Pharms., Inc.*, 2023 WL 4412164, at *8 (N.D. Cal. July 7, 2023); *see also In re Fusion-io*, 2015 WL 661869 at *14 (rejecting challenge to statements about “excellent results” and “significant sales gains” as corporate optimism); *City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 2013 WL 6441843, at *11-12 (N.D. Cal. Dec. 9, 2013) (dismissing as corporate optimism statements reporting a “strong” quarter and “strong growth”). This is particularly true here where Plaintiffs do not allege any facts explaining *how* the adjectives themselves—which is what Plaintiffs challenge—were misleading. There are no allegations, for example, quantifying any slowdown at the time of the challenged statements or explaining why Defendants were required under the securities laws to use Plaintiffs’ preferred terms. The Second Amended Complaint continues to be entirely devoid of any facts suggesting that Free-to-Paid Conversions had slowed down more than what Mr. Deatsch described.

2. Plaintiffs Do Not Allege That Atlassian’s August 19, 2022 Statement About Material Trends for Atlassian’s 2022 Fiscal Year Was False or Misleading

Plaintiffs again challenge one statement in Atlassian’s August 19, 2022 Annual Report:

Statement 5: Other than as disclosed elsewhere in this Annual Report, we are not aware of any trends, uncertainties, demands, commitments or events for the current fiscal year that are reasonably likely to have a material effect on our revenues, income, profitability, liquidity or capital reserves, or that caused the disclosed financial information to be not necessarily indicative of future results of operations or financial conditions.

¶ 114; Ex. A at 66. Plaintiffs reargue that the statement was false and misleading because Defendants were allegedly aware by August 19, 2022 of “two material adverse trends” in Free-to-Paid Conversions and Existing Paid User Expansion. ¶ 115.

1 In rejecting this claim, the Court held that “[r]egardless of which year the report refers to
 2 [FY22 or FY23], the plaintiffs fail to allege that the defendants knew of *any* trend to Paid User
 3 Expansion by the time the report was published on August 19.” Dismissal Order at 16.
 4 Plaintiffs’ new CWs do not change this ruling. They allege only that “things” were “slowing
 5 down” at some point after June 2022, but they do not speak of any specific metric, and so cannot
 6 possibly support Plaintiffs’ speculation that, contrary to the Annual Report’s disclosure,
 7 Defendants were supposedly aware of material adverse trends in either metric as of August 19.

8 Despite this Court’s ruling that “context is key,” Plaintiffs ignore both the actual
 9 statement and its context. The actual statement in the Annual Report said, “we are not aware of
 10 any trends, uncertainties, demands, commitments, or events for the current fiscal year that are
 11 reasonably likely to have a material effect on our revenues.” Ex. A at 66. Even if any metric
 12 had been slowing as of August 19, Plaintiffs have alleged no fact suggesting such a slowdown
 13 amounted to a “*trend* ... reasonably likely to have a *material* effect on our revenues.” *Id.*
 14 (emphasis added). The CWs—and the entire Second Amended Complaint—lack a single fact
 15 describing the *amount* of any slowdown in any metric at the time the Annual Report was filed on
 16 August 19. That one minor metric (Free-to-Paid Conversions) was slowing and another *began*
 17 slowing in mid-August does not plausibly suggest that *either* metric had slowed to such an extent
 18 as of August 19 that Defendants were misleading in saying they were not *aware* of any material
 19 adverse trends. Plaintiffs fail to allege that any material adverse trend *existed* in Existing Paid
 20 User Expansion or Free-to-Paid Conversions as of August 19. *See In re Twitter, Inc. Sec. Litig.*,
 21 506 F. Supp. 3d 867, 885-86 (N.D. Cal. 2020) (rejecting allegations “that defendants would have
 22 been able to determine accurately the true amount of the decline . . . based on a single month of
 23 data”), *aff’d* 29 F.4th 611 (9th Cir. 2022).

24 And as to context, as the Court recognized, just above Statement 5, the Annual Report
 25 “discusses how macro-economic conditions did not materially impact Atlassian’s ‘financial
 26 conditions or results of operations during the fiscal year ended on June 30, 2022,’ but noted that
 27 the future risks posed by the changing macro-economic environment were ‘uncertain and cannot
 28 be predicted at this time.’” Dismissal Order at 16 (quoting Ex. A at 66). This clarification only

underscores that Statement 5 did not purport to speak about trends or any information that post-dated June 30, 2022, and instead *warned* investors that the future was uncertain.⁴ *See Twitter*, 29 F.4th at 621-22 (no falsity where “context makes clear” challenged statements were not misleading); *In re Intel Corp. Sec. Litig.*, 2019 WL 1427660, at *11 (N.D. Cal. Mar. 29, 2019) (dismissing claims where “relevant context” including “words and sentences surrounding the challenged phrases” undermined plaintiff’s allegations); *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 929 (9th Cir. 1996) (viewing statement “in context,” including disclosed risk whose later materialization had no bearing “on the accuracy of Defendants’ predictions” in earlier report).

Finally, to the extent Plaintiffs still claim the Annual Report violates Item 303, 17 C.F.R. § 229.303, which requires disclosure of “known trends or uncertainties” likely to have a material impact on a company’s financial results, ¶¶ 100-04, this argument fares even worse than before. Dismissal Order at 25. Just recently, the Supreme Court held in a unanimous decision that the alleged omission of information required by Item 303 is not sufficient to state a Section 10(b) claim. *Macquarie Infrastructure Corp. v. Moab Part., L.P.*, 2024 WL 1588706 (Apr. 12, 2024); *see also In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1056 (9th Cir. 2014) (“Item 303 does not create a duty to disclose for purposes of Section 10(b).”).

3. Plaintiffs Do Not Allege Facts Establishing That Ms. Bharadwaj’s September 14, 2022 Statements Were False or Misleading

Plaintiffs again challenge three of Ms. Bharadwaj’s statements at a September 14, 2022 Goldman Sachs investor conference (Statements 6-8) where she discussed macroeconomic headwinds and their impact (if any) on various areas of the business. ¶¶ 117-119. As with the other challenged statements, Plaintiffs claim these statements were false or misleading because Defendants were supposedly aware of material adverse trends in Free-to-Paid Conversions and Existing Paid User Expansion in September 2022, but failed to disclose them. ¶¶ 120-121.

⁴ While the Court did not expressly decide whether Statement 5 referred to FY 2022 or 2023, Plaintiffs have offered no support for their allegation that statements in an Annual Report for FY 2022 would somehow purport to speak to the next fiscal year that was just a few weeks old.

1 The Court rejected Plaintiffs’ claim with respect to Free-to-Paid Conversions because
 2 “defendants told the market about the Free to Paid slowdown in August, and Ms. Bharadwaj’s
 3 statements in September convey essentially the same information.” Dismissal Order at 18.
 4 Plaintiffs add nothing to change that finding, nor do they “plead that the Free to Paid Conversion
 5 metric worsened between August 4 and September 14 in a way that would render the ‘bit of
 6 softness’ comment [] misleading, false, or inaccurate,” as the Court required. *Id.*

7 While the Court found Ms. Bharadwaj’s statements were alleged to be misleading
 8 because she “provided no commentary on the Paid User Expansion slowdown that began in mid-
 9 August,” *id.* at 18, Defendants request that the Court revisit that ruling. *Twitter* is instructive.
 10 There, defendants spoke about ongoing work on one product that plaintiff alleged was facing a
 11 demand slowdown. 506 F. Supp. 3d at 885. The court rejected plaintiff’s falsity theory holding
 12 plaintiffs had not alleged the relevant metric “was materially declining or that [defendants] knew
 13 as much at the time of [the challenged] statements.” *Id.* at 885. The court held it was not
 14 “plausible that defendants would have been able to determine accurately the true amount of the
 15 decline in [the relevant product] **based on a single month of data**,” and defendants “do not have
 16 a duty to disclose matters that are merely speculative.” *Id.* at 886 (emphasis added).

17 The same situation exists here for two reasons. First, Plaintiffs do not allege that Existing
 18 Paid User Expansion was slowing down *materially* as of September 14, just four weeks after the
 19 alleged slowdown began; second, they do not allege that she “*knew* as much at the time of [her]
 20 September [14] statements.” *Id.* at 885 (emphasis added). Plaintiffs allege only that the metric
 21 *began* to slow down in mid-August. *See, e.g.*, ¶ 120. Plaintiffs and their CWs do not allege a
 22 single fact about *the extent* of the slowdown, much less that the slowdown was material or that
 23 Ms. Bharadwaj was aware of it. Instead, Plaintiffs point to the November 2022 disclosure
 24 following the end of the quarter that Atlassian “encountered two primary revenue headwinds
 25 during the [first] quarter from changes in the macroeconomic environment,” and updated its
 26 forward-looking guidance “assum[ing] these trends will persist.” Ex. F at 2, 11. But as the
 27 *Twitter* court held, regardless of the full quarter’s impact and what Defendants learned about the
 28 decline months *later*, Plaintiffs must allege particular facts (i) showing a material decline *at the*

1 *time* of the challenged statement, and (ii) plausibly suggesting the Defendants “would have been
 2 able to determine accurately the true amount of the decline ... based on a single month of data.”
 3 *Twitter*, 506 F. Supp. 3d at 885-86. Defendants are not required to *speculate* about whether a
 4 slowdown is, on the one hand, just a blip in data that will be cured in September, or something
 5 that will continue and subsequently have a material impact on financial results. *See id.*
 6 (“Defendants do not have a duty to disclose matters that are merely speculative.”).

7 The information that Ms. Bharadwaj actually did provide also shows she did not mislead
 8 investors about Existing Paid User Expansion—to the contrary, she expressly warned that
 9 Atlassian was monitoring the metric. As the Court recognized, Ms. Bharadwaj reiterated the
 10 previously disclosed slowdown in Free-to-Paid Conversions, and she stated she had not seen
 11 “any discernible trend” in Subscription Upgrades. Dismissal Order at 18; Ex. D at 9-10. She
 12 also expressly warned investors that Existing Paid User Expansion was a metric Defendants were
 13 “continu[ing] to monitor” and “an important one to look at in the current climate.” Ex. D at 10.
 14 None of these statements triggered any obligation to say more. Plaintiffs have not alleged any
 15 fact suggesting there was already a “discernible trend” in Existing Paid User Expansion as of
 16 September 14, 2022 beyond the slight slowdown Defendants had already described. Certainly,
 17 Plaintiffs do not allege facts showing that the metric had already slowed down *materially* by the
 18 time of her statements, or that Ms. Bharadwaj was aware of it. And Ms. Bharadwaj had no duty
 19 to speculate that it *would* slow down materially. *Twitter*, 506 F. Supp. 3d at 885-86; *see also*
 20 *Oracle*, 2019 WL 6877195, at *12 (finding no duty to disclose challenged conduct “absent an
 21 affirmative representation” about same conduct).

22 Ms. Bharadwaj made no affirmative representation about what Atlassian was seeing in
 23 Existing Paid User Expansion—in direct contrast to other discussed metrics—and instead
 24 “warn[ed]” that metric “was an issue to keep an eye on moving forward.” *Ferreira v. Funko*
 25 *Inc.*, 2021 WL 880400, at *13 (C.D. Cal. Feb. 25, 2021).

1 **4. Incorporation by Reference of the Annual Report in the October 4,**
 2 **2022 Form S-8 Did Not Require Updates to the Annual Report**

3 The Court already rejected Plaintiffs’ challenge to Atlassian’s incorporation of its Annual
 4 Report by reference in its October 4, 2022 Form S-8. Dismissal Order at 20 (Statement 9). The
 5 Court explicitly ordered that any amendment to the complaint must identify the law that requires
 6 a company to update a Form S-8 “if the incorporated document was not false or misleading *when*
 7 *the document was made.*” *Id.* (emphasis added). Plaintiffs did not follow the Court’s instruction.
 8 Plaintiffs cite only an inapposite regulation that relates to successor entities disclosing
 9 information “necessary to keep the registration statement from being misleading in any material
 10 respect.” ¶ 123 (citing 17 C.F.R. § 230.414). But the Form S-8 here made clear that the Annual
 11 Report covered the year ended June 30, 2022. Ex. H. Nothing about the incorporation of the
 12 Annual Report that was expressly limited to that period could be considered misleading or
 13 trigger some obligation to update an annual report. Such a requirement would be entirely
 14 untenable, and Plaintiffs’ failure to identify any obligation for Atlassian to update annual
 15 financial results during the next financial year is dispositive.

16 **B. Plaintiffs Still Fail to Plead a Strong Inference of Scienter**

17 In addition to their failure to allege any false statement, Plaintiffs’ claims should again be
 18 dismissed for the independent reason that Plaintiffs still fail to plead particularized facts
 19 supporting a strong inference of scienter. *See* Dismissal Order at 22. Plaintiffs’ heightened
 20 pleading burden under Rule 9(b) to establish a strong inference of scienter “is not an easy
 21 standard to comply with,” nor “was [it] intended to be.” *See Eminence Cap., LLC v. Aspeon,*
 22 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *see also Nguyen v. Endologix, Inc.*, 962 F.3d 405 (9th
 23 Cir. 2020). Plaintiffs’ scienter allegations still come nowhere close to satisfying their heavy
 24 burden. Most fundamentally, Plaintiffs once again “fail to plead a logical motive” for
 25 Defendants’ purported fraud, Dismissal Order at 22, and instead ask this Court to “check [its]
 26 disbelief at the door,” *Nguyen*, 962 F.3d at 415, and find fraud where Defendants purportedly
 27 misled investors about impacts from macroeconomic headwinds knowing the truth would come
 28 out just a couple of months later without anyone trying to capitalize on that supposed knowledge.

1 Plaintiffs’ theory makes no sense and it ignores the more “plausible, nonculpable explanation”
 2 that Defendants were simply “trying to provide open and regular communication to their
 3 shareholders during uncertain economic times.” Dismissal Order at 22-25.

4 **1. Plaintiffs Do Not Identify Any Motive to Defraud**

5 Plaintiffs’ sole allegation in support of Defendants’ purported motive to defraud investors
 6 is once again relegated to a single footnote alleging that Messrs. Farquhar and Cannon-Brookes
 7 sold stock during the class period pursuant to longstanding Rule 10b5-1 trading plans that result
 8 in the sale of exactly the same number of shares across every single trading day during the year.
 9 *See* ¶ 127 n.21; Ex. I. But as the Court previously recognized, these stock sales are “not
 10 sufficient to show that the [] defendants had motive to defraud” because Plaintiffs concede the
 11 sales were “not dramatically out of line with these Defendants’ prior trading practices,” and
 12 “stock sales by corporate insiders are suspicious only when they are dramatically out of line with
 13 prior trading practices at times calculated to maximize the personal benefit from undisclosed
 14 inside information.” Dismissal Order at 22-23 (quoting *Weston*, 2023 WL 3000583, at *22); *see*
 15 *also Park v. GoPro, Inc.*, 2019 WL 1231175, at *23 (N.D. Cal. Mar. 15, 2019) (holding that
 16 trades pursuant to non-discretionary 10b5-1 plans negate inference of scienter).

17 At bottom, Plaintiffs’ scienter theory still rests on the implausible notion that Defendants
 18 deliberately misled investors about Atlassian’s prospects between August and October 2022
 19 while purportedly knowing Atlassian would have to reduce its financial guidance in November
 20 2022 due to macroeconomic headwinds. But the Ninth Circuit has held that courts need not and
 21 should not accept such an illogical motive. *See Nguyen*, 962 F.3d at 415-16 (holding fraud
 22 theory implausible where complaint lacked any allegations that defendants had attempted to
 23 profit from false statements; it “does not resonate in common experience” for a company to
 24 artificially inflate stock prices before “fac[ing] the inevitable fallout”). As this Court recognized,
 25 “it is not logical that these individual defendants would . . . affirmatively omit the full picture
 26 about the status of the company when talking to investors and analysts, and instead reveal the
 27 details eight weeks later in a letter to shareholders.” Dismissal Order at 23. Plaintiffs’ attempt to
 28 manufacture fraud without any plausible motive “makes it much less likely [they] can show a

strong inference of scienter.” *Prodanova v. H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1108 (9th Cir. 2021); *see also Bodri v. GoPro, Inc.*, 252 F. Supp. 3d 912, 933 (N.D. Cal. May 1, 2017) (the “absence of a motive allegation . . . significantly undermine[s] a plaintiff’s theory of fraud”).

2. Plaintiffs’ CWs Do Not Support a Strong Inference of Scienter

Plaintiffs’ CWs do not salvage their deficient scienter allegations because Plaintiffs fail to allege with particularity that any information was known or conveyed to any Defendant that would undermine any challenged statement. No CW alleges *any* specific communications with Messrs. Deatsch, Cannon-Brookes, or Farquhar, meaning their testimony has no bearing on the scienter of those Defendants. *See Elec. Workers Pension Fund, Loc. 103, I.B.E.W. v. HP Inc.*, 2021 WL 4199273, at *8 (N.D. Cal. Sept. 15, 2021) (holding CW failed to support an inference of scienter where CW did not allege “when and whether” issue “was actually conveyed” to defendants); *Veal*, 423 F. Supp. 3d at 814. At most, CW3 claims Defendants had weekly or monthly meetings where metrics were discussed, but he does not allege that *he* attended any such meeting during the class period. ¶ 50. Instead, he says he “was present at many of these meetings during his tenure.” *Id.* That does not meet Plaintiffs’ burden of alleging scienter on a defendant-by-defendant basis with particularity. *Browning v. Amyris, Inc.*, 2014 WL 1285175, at *18 n.6 (N.D. Cal. Mar. 24, 2014) (rejecting CW allegations as “too vague and unsupported to show a strong inference of scienter” related to CWs alleging management must have been aware of adverse data). CW3 also claims he presented Ms. Bharadwaj unidentified “metrics” “either directly in meetings or in a report,” and “on other occasions his team’s report was incorporated into a document that was presented to Defendants Bharadwaj, Cannon-Brookes, and Farquhar.” ¶ 76. But CW3 provides no detail on *when* these meetings took place, *when* these reports were submitted (let alone *when* they were reviewed), and most importantly, he does not allege with any specificity *what* information was communicated in these supposed meetings and reports or how they undermine or relate to any challenged statement. Moreover, CW3 reporting to Ms. Bharadwaj “directly” or “in a report” is implausible given Plaintiffs’ admission that CW3 reported to individuals who in turn reported to Ms. Bharadwaj. ¶¶ 49 n.6, 73.

Generally alleging that “metrics” were presented does not meet Plaintiffs’ heightened burden. *See Wozniak*, 850 F. Supp. 2d at 1043 (no scienter where CW referenced presentation that “contained key metrics,” but “provid[ed] no detail as to the content of those slides, let alone data sufficient to contradict [defendant’s] statements”); *see also In re Apple Inc. Sec. Litig.*, 2020 WL 2857397, at *23 (N.D. Cal. June 2, 2020) (no scienter where CWs did not “detail the specific facts” communicated to defendants “that render defendants’ statements allegedly false”); *Huang v. Higgins*, 2019 WL 1245136, at *7 (N.D. Cal. Mar. 18, 2019) (rejecting CWs as lacking the “specificity in time, context, and details that courts have frequently required as indicia of reliability” where statements “[did] not cite any specific conversation, let alone details such as when and with whom a conversation took place, or what was said”). CW3’s vague and inconsistent allegations, *see supra* Section IV.A.1.a, fail to establish any Defendant’s scienter.

3. Plaintiffs Do Not Plausibly Allege That Any Defendant Acted With an Intent to Deceive or Deliberate Recklessness

Lacking a cognizable theory of motive to defraud or reliable CW testimony, Plaintiffs again do not plausibly allege any particularized facts suggesting Defendants made any of the challenged statements knowing that they were false at the time they were made. *See In re Arrowhead Pharms., Inc. Sec. Litig.*, 2017 WL 8791111, at *6 (C.D. Cal. Dec. 21, 2017) (no scienter absent particularized facts showing defendants had actual knowledge of information contradicting challenged statements). Plaintiffs fall back on traditional scienter buzzwords, but none supports the inference that Defendants intended to defraud investors.

Monitoring of Metrics Does Not Support Scienter. Plaintiffs continue to claim Defendants “monitored trends and subscriber metrics closely” and that, as a result, they had “direct and detailed knowledge of information contradicting their public statements.” ¶ 127. But Plaintiffs still do not allege any fact known by Defendants that contradicts *any* challenged statement. Alleging generally that Defendants monitored unspecified metrics without alleging what those metrics showed and when, let alone that they reflected anything undermining the challenged statements, fails to establish an inference of scienter. *See Prodanova*, 993 F.3d at 1109 (requiring facts that defendants had “detailed and contemporaneous knowledge” of

information contradicting challenged statements); *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1175 (C.D. Cal. 2007) (holding that “mere access” to unspecified information “even combined with allegations of a hands-on management style, is not enough to show deliberate recklessness”); *Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1063 (9th Cir. 2014) (finding “[m]ere access to reports containing undisclosed sales data” insufficient to support scienter); *Zucco*, 552 F.3d at 1000 (finding insufficient “allegations that senior management . . . closely reviewed the accounting numbers generated . . . each quarter [], and that top executives had several meetings in which they discussed quarterly inventory numbers”).

Additionally, Plaintiffs still do not allege that Ms. Bharadwaj was monitoring metrics or had any information on September 14, 2022, contradicting her statements. At most, Plaintiffs reference an internal project to engage with large customers around Labor Day 2022. ¶ 80. But Plaintiffs do not tie that project (“Big Fish”) to any challenged statement, nor does it undermine Defendants’ November 3, 2022 disclosure that the Existing Paid User Expansion slowdown began in the second half of August. Absent allegations establishing that each Defendant had information directly contradicting his or her statements at the time they were made, Plaintiffs cannot establish scienter. *See, e.g., Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1035-36 (9th Cir. 2002) (rejecting scienter allegations based on conclusory statements about management’s access to supposed “negative internal reports” about customer demand without particularized allegations of specific information contradicting defendants’ public statements); *Wet Seal*, 518 F. Supp. 2d at 1175 (rejecting scienter allegations based on management access to real-time reports because, as here, “Plaintiffs have not alleged any specific data that the individual Defendants learned from these reports that were inconsistent with [the company’s] public statements”).

Defendants’ November 2022 Disclosures Do Not Support Scienter. Plaintiffs continue to claim Defendants “admitted” in November that material trends were known in July 2022, ¶ 125, but even accepting the Second Amended Complaint’s conclusory allegations as true, Defendants did no such thing. *See supra* Section IV.A. As the Court previously noted, Defendants disclosed on November 3, 2022 that Free-to-Paid Conversion slowdowns had grown “more pronounced” through the first quarter of fiscal year 2023, and Atlassian *started* to see a slowdown in Existing

1 Paid User Expansion in *the second half* of the first quarter. Dismissal Order at 11-12; Ex. F at 2,
 2 11. This timeline was recognized by analysts. Ex. G at 11-12. This disclosure in no way
 3 “admitted” that material trends in Free-to-Paid Conversions and Existing Paid User Expansion
 4 were known in July 2022 or at the time of any challenged statement. Plaintiffs cannot take
 5 Atlassian’s periodic reporting, which is exactly what the securities laws call for, and frame it as
 6 an “admission” of fraud.

7 Atlassian’s Historical Sales Cycle Does Not Support Scienter. Plaintiffs claim
 8 Atlassian’s historically “linear” sales cycle meant Defendants must have been “immediately
 9 aware of negative trends in the business.” ¶ 128. That claim is pure speculation unsupported by
 10 any particularized fact establishing that Defendants knew of any deviation from the historical
 11 sales cycle at least at the time of the challenged statements in early August. Dismissal Order at
 12 12. On the contrary, Defendants warned investors in August 2022 that the sales cycle could
 13 become more seasonal, negating any inference that a newly observed slowdown beginning in
 14 mid-August 2022 would have spelled doom to Atlassian. *Id.* at 24 (“[Plaintiffs] do not allege . . .
 15 that any defendant intentionally or recklessly withheld information that the linear sales cycle had
 16 changed to one with more seasonality . . . [n]or could they . . . the August 4 earnings call shows
 17 that the defendants warned the public that their sales would likely experience seasonality.”).
 18 Defendants promptly disclosed macroeconomic impacts in the first earnings announcement after
 19 their onset. That is transparency, not fraud.

20 Plaintiffs Cannot Rely on a “Core Operations” Theory. Plaintiffs continue to invoke a
 21 catch-all, conclusory “core operations” theory of scienter based on the general allegation that
 22 because “90% of [Atlassian’s] revenue in any given year comes from existing customers,”
 23 Defendants must have been aware of “Atlassian’s core business.” ¶ 132. But pleading scienter
 24 based on core operations is “not easy” and is appropriate only in “rare circumstances,” such as
 25 where a plaintiff alleges “witness accounts demonstrating that executives had actual involvement
 26 in creating false reports.” *Welgus v. TriNet Grp., Inc.*, 2017 WL 6466264, at *19 (N.D. Cal.
 27 Dec. 18, 2017) (rejecting core-operations theory where defendant derived 83% of revenue from
 28 one product). Such rare circumstances are not alleged and do not exist here. Allegations

1 “merely emphasizing the importance” of a business metric or product line to the company do
 2 “not show that the core operations theory applies.” *See, e.g., Pardi v. Tricida, Inc.*, 2022 WL
 3 3018144, at *15 (N.D. Cal. July 29, 2022) (citing cases); *In re AnaptysBio, Inc. Sec. Litig.*, 2021
 4 WL 4267413, at *14 (S.D. Cal. Sept. 20, 2021) (rejecting core operations theory based on
 5 importance of company’s product).

6 Analyst Opinions Do Not Support Scienter. Plaintiffs again point to analyst reports
 7 expressing interest in macroeconomic headwinds and later disappointment in Atlassian’s reduced
 8 forward-looking guidance as support for scienter. ¶¶ 129-131. The Court already rejected these
 9 allegations because Plaintiffs “do not assert that anyone at Atlassian manipulated results or hid
 10 unfavorable analyses” or that any Defendant “answered an investor’s question in a way that
 11 intentionally hid this misinformation.” Dismissal Order at 23-24. Plaintiffs add nothing to cure
 12 this deficiency. The opinions of third-party analysts have nothing to do with Defendants’ state of
 13 mind. *See In re Cisco Sys. Inc. Sec. Litig.*, 2013 WL 1402788, at *10 n.5 (N.D. Cal. Mar. 29,
 14 2013) (rejecting argument that “analyst reactions” supported scienter); *Wet Seal*, 518 F. Supp. 2d
 15 at 1172-73 (rejecting scienter based on reported statements made by analysts); *Campo v. Sears*
 16 *Holding Corp.*, 371 F. App’x 212, 215 (2d Cir. 2010) (no scienter based on journalist opinion).

17 A Purported Item 303 Violation (That Did Not Occur) Does Not Support Scienter.
 18 Plaintiffs claim Atlassian’s alleged Item 303 violation supports scienter. ¶ 133. As this Court
 19 already found, Plaintiffs “do not plausibly allege that the defendants failed to disclose known
 20 material trends in the August 19 or October 4 reports,” and thus, their attempt to “[r]efram[e] the
 21 same argument as a violation of Item 303 does not save their deficient allegations.” Dismissal
 22 Order at 25. And in any event, “[t]he majority of circuits have clearly held that standing alone,
 23 allegations of violations of GAAP or SEC regulations do not establish scienter.” *In re*
 24 *Cornerstone Propane Partners, L.P. Sec. Litig.*, 355 F. Supp. 2d 1069, 1091 (N.D. Cal. 2005).

25 **4. The Non-Fraudulent Inference Is More Compelling**

26 As the Court previously found, “there is a ‘plausible, nonculpable explanation’ for the
 27 defendant’s conduct,” which is that Defendants “were trying to provide open and regular
 28 communications to their shareholders during uncertain economic times.” Dismissal Order at 25.

It is far more plausible that Defendants believed in the continued growth of their products and kept investors apprised of developments as soon as they were observed and understood. Indeed, Defendants informed investors about new slowdowns in Free-to-Paid Conversions at the start of the single-quarter class period, and updated investors about newly observed slowdowns in Existing Paid User Expansion in announcing results for the very next quarter. And even though Atlassian *met its financial guidance* for that quarter, it transparently reset investor expectations for the rest of the fiscal year based on these new observations. Plaintiffs’ manufactured securities fraud claims would have every company who does not have a crystal ball to predict changes intra-quarter found liable of securities fraud. That is not the law. And comparing the non-fraudulent inference against a strong inference of scienter, “[i]t is not a ‘tie’ or even a ‘close question.’” *Id.*; *see also In re Alteryx, Inc. Sec. Litig.*, 2021 WL 4551201, at *10 (C.D. Cal. June 17, 2021) (no scienter where the “more plausible alternative explanation” is that defendants’ decision to “pull [forward-looking] fiscal year guidance” in the midst of uncertain economic circumstances “is more indicative of a business responding to uncertainty”); *In re Pivotal Sec. Litig.*, 2020 WL 4193384, at *17 (N.D. Cal. July 21, 2020) (“honest optimism followed by disappointment is not the same as lying or misleading”).

C. Plaintiffs Fail to State a Section 20(a) Claim

Plaintiffs do not plead a Section 10(b) claim, so their Section 20(a) claim fails. Dismissal Order at 25 n.6.

V. CONCLUSION

Defendants respectfully request that the Court grant Defendants’ Motion to Dismiss Plaintiffs’ Second Amended Complaint with prejudice.

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Respectfully submitted,

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